

In the United States
Circuit Court of Appeals
For the Ninth Circuit. 17

In the Matter of
ONTARIO CANNING CO. INC., a corporation,
Debtor.

WEISSTEIN BROS. & SURVOL, a California corporation,

Appellant,

vs.

HUBERT F. LAUGHARN, Trustee in Bankruptcy of
Ontario Canning Co. Inc., Debtor,

Appellee.

Transcript of Record.

Upon Appeal from the District Court of the United States for the
Southern District of California, Central Division.

FILED

FEB - 6 1936

In the United States
Circuit Court of Appeals
For the Ninth Circuit.

In the Matter of

ONTARIO CANNING CO. INC., a corporation,
Debtor.

WEISSTEIN BROS. & SURVOL, a California corpo-
ration,

Appellant,

vs.

HUBERT F. LAUGHARN, Trustee in Bankruptcy of
Ontario Canning Co. Inc., Debtor,

Appellee.

Transcript of Record.

Upon Appeal from the District Court of the United States for the
Southern District of California, Central Division.

INDEX.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in italics; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

	PAGE
Assignments of Error.....	18
Citation	2
Clerk's Certificate.....	25
Cost Bond	22
Names and Addresses of Solicitors.....	1
Order Allowing Appeal.....	20
Order Approving Cost Bond.....	24
Order of November 30th, 1935, Reversing Order of Referee	14
Petition for Appeal and Order Allowing Appeal.....	16
Statement of the Case in Lieu of Record.....	3
Memorandum of Decision.....	9
Order Approving Agreed Statement.....	12
Stipulation	4
Stipulation for Contents of Record on Appeal.....	13

Names and Addresses of Solicitors.

For Appellant Weisstein Bros. & Survol:

JULES C. GOLDSTONE, Esq.,

DAVID A. SONDEL, Esq.,

911 Van Nuys Building,

Los Angeles, California.

For Appellee Hubert F. Laugharn, Trustee for Ontario
Canning Co., Inc., Debtor:

ROBERT B. POWELL, Esq.,

633 Subway Terminal Building,

Los Angeles, California.

United States of America, ss.

To HUBERT F. LAUGHARN, Trustee in Bankruptcy
of Ontario Canning Co. Inc., Debtor Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 27th day of January, A. D. 1936, pursuant to an appeal duly obtained and filed on the 27th day of December, 1935, in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain matter entitled "In the matter of Ontario Canning Co. Inc., a corporation, Debtor" wherein Weisstein Bros. & Survol, a California corporation is appellant and you are appellee to show cause, if any there be, why the order and decree in the said appeal mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable GEO. COSGRAVE United States District Judge for the Southern District of California, this 27th day of December, A. D. 1935, and of the Independence of the United States, the one hundred and Sixtieth

Geo Cosgrave

U. S. District Judge for the Southern District
of California.

Due and personal service of the within Citation is hereby expressly admitted and acknowledged.

Los Angeles Cal; January 2nd, 1936

Hubert F. Laugharn,

Trustee for Ontario Canning Co. Inc. Debtor
Robt. B. Powell, Atty.

[Endorsed]: Filed Jan. 3, 1936 at 4:30 P. M. R. S.
Zimmerman, Clerk By F. Betz, Deputy Clerk.

IN THE UNITED STATES DISTRICT COURT,
IN AND FOR THE SOUTHERN DISTRICT
OF CALIFORNIA, CENTRAL
DIVISION.

-----		IN BANKRUPTCY
IN THE MATTER)	NO. 24637-C
)	
OF)	AGREED
)	STATEMENT OF
ONTARIO CANNING CO.)		THE CASE
INC., a corporation,)	IN LIEU OF RECORD,
)	PURSUANT TO
Debtor.)		EQUITY RULE 77.

The parties hereto, believing that the questions presented by the appeal herein from an order of the above entitled Court, dated November 30th, 1935, setting aside on review an order of the Referee in Bankruptcy of this Court, before whom the administration of the debtor estate is pending, can be determined by the United States Circuit Court of Appeals, for the Ninth Circuit, to which the said appeal has been taken and allowed, without an examination of all the pleadings and evidence, present this statement of the case pursuant to Equity Rule 77 showing how the questions arose and were decided in said District Court, and setting forth such of the facts alleged and proved or sought to be proved as are deemed essential to a decision of such questions by said United States Circuit Court of Appeals for the Ninth Circuit, as follows:

On December 15th, 1934, Ontario Canning Co. Inc. filed its debtor's petition in this Court and the same was approved by said Court. On January 13th, 1935, this

Court made an order authorizing the Trustee to dispose of the assets of said estate. The Trustee presented his petition for an order to confirm the sale, which petition was heard on the 4th day of February, 1935. The best bid obtainable was the sum of \$3500.00 offered by the Oakland Packing Company in a written offer of purchase, part of which offer is as follows:

“* * * * *

“2. All right, title and interest of the debtor estate in and to canned goods as follows:

“* * * * *

“(c) 11,928 cases pledged to secure loan of approximately \$17,995.79 and also to secure open account of \$3,499.61 with the Security First National Trust and Savings Bank.

“* * * * *”

At the hearing for the sale, claimant, Weisstein Bros. & Survol objected to such sale on the ground that 253 cases of berries offered for sale by the Trustee belonged to said claimant, and in order to perfect the sale, a stipulation between Weisstein Bros. & Survol and the Trustee was entered into, as follows:

(TITLE OF COURT AND CAUSE)

STIPULATION

“WHEREAS, Weisstein Bros., and Survol, hereinafter for convenience only referred to as the ‘Claimant’, contend:

“That on or about the 10th day of August, 1934, Claimant purchased from the debtor 353 cases of four

dozen cans each #IT Dell Valle Youngberries Fancy, totaling 1412 dozen, at a purchase price of 97 1/2¢ per dozen, and that Claimant paid the purchase price thereof in full and in cash, and that Claimant has at all times herein referred to been the owner of and entitled to the possession of said merchandise.

“That said merchandise, with the exception of 100 cases thereof which were subsequently delivered to Claimant, was not delivered to Claimant, but that 253 cases, or 1012 dozen, remained in the possession of the debtor.

“That said 253 cases came into the possession of the trustee herein or that the same were delivered by the debtor into the possession of a warehouse on the premises of the debtor, maintained and operated and in the possession of either the debtor or Lawrence Warehouse Company.

“That Claimant is the owner of and entitled to the possession of said 253 cases in whosever possession the same may be found and that the present market value thereof is One Thousand Three Hundred Sixty-Six Dollars and 20/100ths (\$1,366.20); and

“WHEREAS, the trustee had effected a sale of all of the assets of the debtor, which sale trustee considered to be highly advantageous to the estate and which sale trustee was desirous of consummating; and

“WHEREAS, said Claimant, in consideration of the stipulation hereinafter stated, waived all objections which Claimant might have had to the confirmation of such sale by the above entitled Court on the 4th day of February, 1935.

“IT IS HEREBY STIPULATED that the trustee shall impound and keep in his possession out of the proceeds of the sale of the assets of the debtor, confirmed by the above entitled Court on the 4th day of February, 1935, in the sum of One Thousand Three Hundred Sixty-Six Dollars and 20/100ths (\$1,366.20), and that said sum shall be used, disposed of and paid by the trustee in the following manner and for the following uses and purposes, and not otherwise:

“In the event Claimant shall establish that, as of the date of the filing of the petition herein, it was the owner of and entitled to the possession of 253 cases #IT Dell Valle Youngberries Fancy and that said merchandise came into the possession of the trustee or that said merchandise had been theretofore or thereafter placed in the field warehouse of the debtor, operated by the Lawrence Warehouse Company, and that the trustee or Claimant was entitled to recover possession thereof from or out of said field warehouse, then, and in either of such events, the trustee shall pay and deliver said sum to Claimant and such payment shall be and constitute full payment of any and all claims of said Claimant against said trustee, or said debtor.

“In the event Claimant shall fail to establish such title or right to possession, said sum shall be thereafter used as a part of the general assets of the estate and Claimant may thereupon file its claim herein in the usual course.

“The determination of the title and the right to possession of said merchandise shall be had by a hearing before the Honorable D. W. Richards, one of the referees in bankruptcy in the above entitled Court, or such other referee as the parties may agree upon in the event said

honorable referee is unavailable, as on a petition for reclamation, but without the necessity for the filing of any pleadings therein or thereon, it being intended that this stipulation shall fix and determine the issues to be tried at such hearing and that said referee shall hereby be authorized and empowered to try and determine said issues as a summary proceeding, subject, nevertheless, to review by the above entitled Court and to any other review or appeal allowed by law.

“Any action had or taken by the Claimant pursuant to this stipulation shall not prejudice nor affect the Claimant’s rights and remedies against any other person other than the trustee and the above entitled estate.

“The foregoing stipulation is entered into pursuant to the approval thereof given by the Honorable George Cosgrave, Judge of the above entitled Court, in open Court the 4th day of February, 1935.

“Dated: February 13, 1935.

ROBERT B. POWELL

Attorneys for Trustee.

JULES C. GOLDSTONE

Attorneys for Claimant.”

Thereafter, on April 18th, 1935, a hearing was had before Honorable D. W. Richards, a Referee in Bankruptcy, to determine and decree the rights of the parties under said stipulation. After taking testimony, the Referee made his written opinion and order, as follows:

(TITLE OF COURT AND CAUSE)

"REFEREE'S OPINION.

"The above-entitled matter came on for hearing on April 18, 1935, Robert B. Powell and William J. Heffran appearing for the Trustee, Hubert F. Laugharn; David A. (Hasandel) Sondel and Jules C. Goldstone appearing as counsel for Weisstein Brothers and Survol; and the Security First National Bank of Los Angeles and J. J. Sugarman appearing specially by Chester E. Cleveland, Jr., and the Lawrence Warehouse Company appearing specially by their counsel, Frank M. Barry.

"Counsel for the Lawrence Warehouse Company and the Security-First National Bank of Los Angeles, and J. J. Sugarman, having appeared specially and objected to the jurisdiction of the Referee to hear said matter, IT IS HEREBY ORDERED that said objection as to the jurisdiction of the Referee is a good and valid objection, and is, therefore, sustained.

"The meeting then proceeded to hearing claim of Weisstein Brothers and Survol, on behalf of Hubert F. Laugharn as Trustee of the Bankrupt Estate and Weisstein Bros. and Survol by their counsel, and evidence both oral and documentary having been submitted, the Referee is of the opinion that under and pursuant to the stipulation dated February 13, 1935, between Robert B. Powell, as attorney for the Trustee, and Jules C. Goldstone, attorney for Weisstein Brothers and Survol, the claimant, that said claim has established that as of the date of filing the petition it was the owner of and entitled to the possession of 253 No. IT. Dell Valle Youngberries, fancy, and that said merchandise had been placed in a field warehouse by

the debtor, operated by the Lawrence Warehouse Company, and that claimant was entitled to recover possession thereof from the said field warehouse, and that the Trustee should pay to Weisstein Brothers and Survol such sums as will constitute full payment of any and all claims, to wit, the sum of \$1366.20, and IT IS SO ORDERED.

“Dated June 11, 1935.

D. W. RICHARDS

Referee in Bankruptcy.”

The said order was reviewed by this Court on petition of the Trustee and this Court made its order and decree setting aside and reversing the order of the Referee, this Court having rendered its written opinion, as follows:

(TITLE OF COURT AND CAUSE)

“Memorandum of Decision.”

“COSGRAVE, District Judge.

“In August, 1934, at the time when claimant bought the berries, they were in a warehouse where they had been previously placed by the bankrupt as a pledge to the Security First National Bank for money advanced. The bank asserted its rights under this pledge, which apparently it had a right to do, and sold the goods, applying the proceeds on its indebtedness of the bankrupt. So far as the Ontario Canning Co. and claimant are concerned the latter had bought and paid for the goods and title had passed. The bankrupt, however, was unable to deliver because of the situation just described. What is the remedy of the claimant in such a case? Were the goods available, undoubtedly the claimant would be enti-

tled to delivery. In default of such relief, however, it seems to me it has only a demand for money as a general creditor.

“Claimant is not aided by the stipulation. Plainly there was no right of possession in the claimant because of the previous pledge to the bank. In any event such right could not be litigated except where the bank is a party.

“Petition of the trustee for review is therefore granted and the trustee will present an order in accordance with this memorandum.

“Exception to claimants.

October 8, 1935.”

The essential facts are as follows:

Claimant operated a retail grocery business in the City of Los Angeles. In August, 1934, it purchased from the Ontario Canning Co. Inc. 353 cases of berries for the sum of \$1342.29. Claimant received an invoice for such items and in such amount, and issued its check in full payment, payable to the order of the Security-First National Trust and Savings Bank upon a draft drawn on the buyer by said seller. Thereafter, installment deliveries of some of the berries were made to the claimant, and an aggregate amount of 100 cases was received by claimant, but claimant has never received the balance of 253 cases, although the claimant demanded possession but was unable to procure the release, surrender or delivery of said 253 cases.

These berries, along with other stock of the Ontario Canning Co. Inc. had been previously pledged by said canning company to the Security-First National Trust and Savings Bank to secure an indebtedness to said bank

and such merchandise had been deposited by the canning company with the Lawrence Warehouse Company under such pledge. The warehouse company had opened a warehouse in a part of the same building used by the canning company, but the canning company exercised no dominion or control over the part of the building occupied by the warehouse company. The bank and the canning company had made arrangements between themselves of the conditions upon which merchandise so pledged might be released. The claimant had no knowledge of the existence of said pledge agreement and had no knowledge of any arrangements between the bank and the canning company, and had procured the delivery of the first 100 cases without any delay or difficulty. The 253 cases had been stacked in the warehouse and each stack was marked with a card bearing the words "Sold to Weisstein Bros. & Survol".

The claimant offered the testimony of its officer and of the president of the canning company and the debtor presented no testimony. The proofs showed that the failure of the canning company to release the merchandise and its inability to surrender and deliver such merchandise to the claimant was not because of any arrangement between the canning company and the claimant but was due solely to the transactions between the canning company and such bank, and the claimant had no knowledge prior to the filing of the canning company's petition under Section 77B of the Bankruptcy Act of any arrangements between such canning company and the bank respecting the release of any merchandise.

After this Court made its order and decree, and within the time and in the form and manner provided by law, the claimant perfected its appeal from said order of the

District Court made on November 30th, 1935 and entered on December 3rd, 1935, to the United States Circuit Court of Appeals, for the Ninth Circuit, such appeal having been allowed by this Court, a Citation having been issued after appellant had filed its Petition for the allowance of the appeal, together with its Assignment of Errors.

IT IS HEREBY STIPULATED AND AGREED that the foregoing agreed statement of the case is true and correct and that all of the facts therein stated concerning the record may be regarded as true by the United States Circuit Court of Appeals, for the Ninth Circuit and shall be taken and deemed by the Court as made pursuant to Equity Rule 77.

DATED this 21 day of January, 1936.

Jules C. Goldstone

And David A. Sondel

Attorneys for Appellant and Claimant.

Robert B. Powell

Attorney for Hubert F. Laugharn as Trustee of
Ontario Canning Co. Inc., Debtor.

The foregoing agreed statement of the case is hereby approved, and

IT IS ORDERED that such statement be filed with the Clerk of the above entitled Court and that a certified copy thereof be filed with the Clerk of the United States Circuit Court of Appeals, for the Ninth Circuit.

DATED this 22nd day of January, 1936.

Geo. Cosgrave

United States District Judge

(TITLE OF COURT AND CAUSE)

STIPULATION FOR CONTENTS OF RECORD ON
APPEAL.

IT IS HEREBY STIPULATED by and between the parties hereto that the Clerk of the Court in making up the record on appeal herein to the United States Circuit Court of Appeals for the Ninth Circuit, from an order of this Court made on November 30th, 1935, reversing the order of the Referee in Bankruptcy directing the full payment of \$1366.20 to the claimant, Weisstein Bros. & Survol, shall include the following papers only:

1. Agreed statement of the case;
2. The order of the Court made November 30th, 1935;
3. Petition for appeal and order allowing same;
4. Assignment of errors;
5. Citation on appeal.

IT IS FURTHER STIPULATED that the whole title of the Court and Cause shall be omitted except in connection with the agreed statement of the case, and shall be referred to only as "Title of Court and Cause".

DATED this 21 day of January, 1936.

Jules C. Goldstone

And David A. Sondel

Attorneys for Appellant and Claimant.

Robert B. Powell

Attorney for Hubert F. Laugharn, Trustee of
Ontario Canning Co. Inc. Debtor.

[Endorsed]: Filed R. Z. Zimmerman, Clerk at 56 min. past 12 o'clock, Jan. 22, 1936 P. M. By Edmund L. Smith, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

ORDER.

A stipulation having heretofore been entered by and between Hubert F. Laugharn, Trustee of the above entitled estate and Weinstein Brothers and Survol, claimants, through their respective attorneys; and an order to show cause having duly issued out of this Court and having come on for hearing before D. W. Richards, Referee in Bankruptcy, the said D. W. Richards, Referee in Bankruptcy having filed his order herein that under the terms of said stipulation the said claimants, Weinstein Brothers and Survol were entitled to be paid by Hubert F. Laugharn, Trustee of the above entitled estate the principal sum of \$1,366.20; and the said Hubert F. Laugharn, Trustee, having filed his Petition for Review of said order, and the matter having duly come on before this Court on September 23, 1935 at the hour of 2 P. M. thereof, and the said parties having orally appeared before this Court through their respective attorneys; and written memoranda having been filed by the said respective parties; and the Court being fully advised in the premises, the Court hereby makes the following order :

IT IS HEREBY ORDERED that the Petition for Review heretofore filed by Hubert F. Laugharn be, and the same hereby is, granted, and the order heretofore entered in the above entitled matter and signed by D. W. Richards, Referee in Bankruptcy, is hereby set aside and annulled.

IT IS FURTHER ORDERED ADJUDGED AND DECREED that Weinstein Brothers and Survol are general creditors of this estate in the principal sum of \$962.04.

DATED: this 30th day of November, 1935.

Geo. Cosgrave
Judge of the District Court

Approved as to form as required by Rule 44.

Robert B. Powell

[Endorsed]: Filed R. S. Zimmerman, Clerk at 16 min. past 12 o'clock Dec. 3, 1935 P. M. By L. Wayne Thomas, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

PETITION FOR APPEAL.

The undersigned Weisstein Bros. & Survol, a California corporation, conceiving itself aggrieved by the written order of this Court, made on the 30th day of November, 1935, and entered on the 3rd day of December, 1935, wherein this Court reversed, set aside and annulled an order theretofore made on June 11th, 1935 by Honorable D. W. Richards, Referee in Bankruptcy in the above entitled matter, which said order of Honorable D. W. Richards as Referee in said bankruptcy estate determined, ordered and decreed that the undersigned was entitled to receive and recover from the Trustee in said bankrupt estate the sum of \$1366.20 in cash and wherein by said order of the Referee, the Trustee of said bankruptcy estate was ordered and directed to pay such sum of \$1366.20 in cash to the undersigned, and whereby the order of this Court made on said 30th day of November, 1935, adjudged and decreed that the undersigned is not entitled to the receipt of such or any sum in cash but is only a general creditor of said bankrupt estate in the principal sum of \$962.04 and not otherwise, does hereby petition this Court for an appeal from said order and decree to the United States Circuit Court of Appeals, for the Ninth Circuit and prays that its appeal may be allowed and that citation issue as provided by law directed to Hubert F. Laugharn, Trustee of the above bankruptcy, demanding him to appear before the United States Circuit Court of

Appeals for the Ninth Circuit, to do and receive that which may appertain to justice to be done in the premises, and that a transcript of the record, proceedings and evidence in said proceedings and cause, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit, under the rules of said Court in such causes made and provided, and that the amount of the cost bond to be filed by your petitioner be determined.

DATED: In the Southern District of California, Central Division, this 23rd day of December, 1935.

WEISSTEIN BROS. & SURVOL,
a California corporation,

By Morris Weisstein, Pres.

Petitioner.

Jules C. Goldstone

David A. Sondel

Attorneys for Petitioner.

[Endorsed]: Filed R. S. Zimmerman, Clerk at 13 min. past 1 o'clock Dec. 27, 1935 P. M. By L. B. Figg Deputy Clerk.

IN THE UNITED STATES DISTRICT COURT,
 IN AND FOR THE SOUTHERN DISTRICT
 OF CALIFORNIA CENTRAL
 DIVISION.

--o0o--

 IN THE MATTER) IN BANKRUPTCY
))
 OF) NO. 24637-C
 ONTARIO CANNING CO.)
 INC., a corporation,) ASSIGNMENT OF
) Debtor.) ERRORS.

NOW COMES Weisstein Bros. & Survol, a California corporation and files the following Assignment of Errors on appeal from the order of the District Court of the United States, for the Southern District of California, Central Division, dated November 30th, 1935, and entered on the 3rd day of December, 1935:

FIRST ASSIGNMENT OF ERROR.

Said Court erred in reversing, annulling, setting aside and in any manner disturbing the order of the Referee in Bankruptcy, which order of the Referee bears date June 11th, 1935, and by which order of the Referee, the Trustee of the above bankrupt estate was ordered and directed to pay to the appellant and claimant herein, Weisstein Bros. & Survol, a corporation, the sum of \$1366.20 in cash, out of the cash assets of said estate.

SECOND ASSIGNMENT OF ERROR.

Said Court erred in reversing, setting aside, annulling and in any manner disturbing the order of the Referee in Bankruptcy in said matter wherein by said order of

the Referee dated June 11th, 1935, it was found and determined that the undersigned appellant and claimant, Weisstein Bros. & Survol, a corporation, was entitled to have, recover and receive of and from the Trustee of said bankrupt estate the sum of \$1366.20 out of the cash assets of said estate.

THIRD ASSIGNMENT OF ERROR.

Said Court erred in making its order dated November 30th, 1935 and entered on the 3rd day of December, 1935, wherein by said order it was adjudged and decreed that the undersigned appellant and claimant, Weisstein Bros. & Survol is a general creditor of said bankrupt estate in the sum of \$962.04.

WHEREFORE, it is prayed that the order of the United States District Court, for the Southern District of California, Central Division, heretofore referred to may be reversed and set aside, and that the order of the Referee in Bankruptcy directing and declaring that the undersigned appellant and claimant, Weisstein Bros. & Survol is entitled to the sum of \$1366.20 in cash to be paid to it by the Trustee of said bankrupt estate out of assets therein existing, be affirmed, reinstated, and allowed and that the same be given full force and effect, and for such other and further relief as may seem meet and proper to the Court.

WEISSTEIN BROS. & SURVOL,
a California corporation,
By Jules C. Goldstone
And David A. Sondel
Its Attorneys.

[Endorsed]: Filed R. S. Zimmerman, Clerk at 13 min. past 1 o'clock Dec. 27, 1935 P. M. By L. B. Figg, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

ORDER

Upon reading and filing the petition of Weisstein Bros. & Survol, a California corporation, for an appeal from a written order of this Court, dated November 30th, 1935, and entered on the 3rd day of December, 1935, to the United States Circuit Court of Appeals for the Ninth Circuit, and upon the filing of its Assignment of Errors with the Clerk of this Court, and upon application of counsel for said petitioner, and good cause appearing therefor,

IT IS HEREBY ORDERED that Weisstein Bros. & Survol, a California corporation, be and it is hereby allowed and permitted to appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the written order of this Court, dated November 30th, 1935, and entered on the 3rd day of December, 1935.

IT IS FURTHER ORDERED that citation issue as provided by law, directed to Hubert F. Laugharn as Trustee of Ontario Canning Co. Inc., a corporation, debtor, demanding him to appear before the United States Circuit Court of Appeals for the Ninth Circuit to show cause, if any there be, why the said order and decree should not be corrected and why speedy justice should not be done to the parties in that behalf.

IT IS FURTHER ORDERED that a transcript of the record and proceedings in such cause pertaining to the

petition for order to show cause and order based thereon respecting the claim and demand of Weisstein Bros. & Survol, a corporation, for the payment to it by the Trustee in Bankruptcy of the sum of \$1366.20 in cash, be sent to the United States Circuit Court of Appeals for the Ninth Circuit, under the rules of said Court in such cases made and provided.

IT IS FURTHER ORDERED that petitioner file cost bond in the amount of \$250.00.

DATED: Los Angeles, California, Southern District of California, Central Division, this 27 day of December, 1935.

Geo Cosgrave

UNITED STATES DISTRICT JUDGE,
SOUTHERN DISTRICT OF CALIFORNIA,
CENTRAL DIVISION

[Endorsed]: Filed R. S. Zimmerman, Clerk at 43 min. past 1 o'clock Dec. 27 1935 P. M. By L. B. Figg, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

Cost Bond

KNOW ALL MEN BY THESE PRESENTS, That we, Weisstein Bros. and Survol, a California corporation, (hereinafter called Appellant), as Principal and the Fidelity and Deposit Company of Maryland, a corporation, as Surety, are held and firmly bound in the sum of Two hundred fifty and no/100 (\$250.00) Dollars, lawful money of the United States of America, to be paid to the Debtor as above captioned, for which payment, well and truly to be made, we bind ourselves, our heirs, executors and successors, jointly and severally, firmly by these presents.

WHEREAS, the above named Claimant has appealed or is about to appeal, to the United States Circuit Court of Appeals for the Ninth *District*, from an order entered December 3rd, 1935, setting aside and annulling an order made June 11th, 1935, by the Honorable D. W. Richards, Referee in Bankruptcy, recognizing Weisstein Bros. and Survol, a California corporation, as a preferred creditor,

NOW, THEREFORE, in consideration of said appeal and of the premises, if the Appellant, the said Weisstein Bros. and Survol, a California corporation, Claimant above named, shall prosecute its writ on appeal to effect,

and answer all costs if it fails to make its plea good, then this obligation shall be void; otherwise to remain in full force and virtue.

Signed and sealed this 26th day of December, 1935.

WEISSTEIN BROS. AND SURVOL

By Morris Weisstein, Pres.

FIDELITY AND DEPOSIT COMPANY
OF MARYLAND

By W. H. Cantwell

(W. H. Cantwell)

Attorney in Fact

Attest Theresa Fitzgibbons

[Seal]

(Theresa Fitzgibbons)

Agent

STATE OF CALIFORNIA)

) ss:

County of Los Angeles)

On this 26th day of December, 1935, before me S. M. Smith, a Notary Public, in and for the County and State aforesaid, duly commissioned and sworn, personally appeared W. H. Cantwell and Theresa Fitzgibbons known to me to be the persons whose names are subscribed to the foregoing instrument as the Attorney-in-Fact and Agent

respectively of the Fidelity and Deposit Company of Maryland, and acknowledged to me that they subscribed the name of Fidelity and Deposit Company of Maryland thereto as Principal and their own names as Attorney-in-Fact and Agent, respectively.

[Seal]

S. M. Smith

Notary Public in and for the State of California,
County of Los Angeles.

My Commission Expires February 18, 1938

Examined and recommended for approval as provided in Rule 28.

Jules C. Goldstone

David A. Sondel

Attorneys

Approved this 27th day of December, 1935

Geo. Cosgrave

District Judge

[Endorsed]: Filed R. S. Zimmerman, Clerk at 43 min past 1 o'clock Dec 27, 1935 P. M. By L. B. Figg, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

CLERK'S CERTIFICATE.

I, R. S. Zimmerman, clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 24 pages, numbered from 1 to 24 inclusive, to be the Transcript of Record on Appeal in the above entitled cause, as printed by the appellant, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citation; agreed statement of the case; order of the court made November 30th, 1935; petition for appeal; assignment of errors; order allowing appeal, and cost bond.

I DO FURTHER CERTIFY that the amount paid for printing the foregoing record on appeal is \$ and that said amount has been paid the printer by the appellant herein and a receipted bill is herewith enclosed, also that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Appeal amount to..... and that said amount has been paid me by the appellant herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Central Division, this..... day of February, in the year of Our Lord One Thousand Nine Hundred and Thirty-six, and of our Independence the One Hundred and Sixtieth.

R. S. ZIMMERMAN,

Clerk of the District Court of the United States of America, in and for the Southern District of California.

By

Deputy.